

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, DECEMBER 17, 2003**

CALL TO ORDER / ROLL CALL

The Adjourned City Council Closed Session meeting of December 17, 2003 (adjourned from meeting of December 15), was called to order by Mayor Hansen at 5:02 p.m.

Present: Council Members – Beckman, Hitchcock, Howard, Land (arrived at 5:20 p.m.), and
Mayor Hansen

Absent: Council Members – None

Also Present: City Manager Flynn, City Attorney Hays, and City Clerk Blackston

CLOSED SESSION

At 5:02 p.m., Mayor Hansen adjourned the meeting to a Closed Session to discuss the following two matters, which were adjourned from the Special City Council meeting of December 15, 2003:

B-1 Actual Litigation: Government Code §54956.9(a); one case; People of the State of California; and the City of Lodi, California v. M & P Investments, et al.; United States District Court, Eastern District of California, Case No. CIV-S-00-2441 FCD JFM

B-2 Actual litigation: Government Code §54956.9(a); one case; Hartford Accident and Indemnity Company, et al. v. City of Lodi, et al., Superior Court, County of San Francisco, Case No. 323658

The Adjourned Closed Session meeting ended at 6:05 p.m.

C-1 CALL TO ORDER / ROLL CALL

The City Council Closed Session meeting of December 17, 2003, was called to order by Mayor Hansen at 6:07 p.m.

Present: Council Members – Beckman, Hitchcock, Howard, Land, and Mayor Hansen

Absent: Council Members – None

Also Present: City Manager Flynn, City Attorney Hays, and City Clerk Blackston

C-2 ANNOUNCEMENT OF CLOSED SESSION

a) Prospective acquisition of real property located at 1279, 1263, and 1219 Bezug Lane, Lodi, CA (APN #031-040-15, 031-040-13, and 031-040-10); the negotiating parties are City of Lodi and Joseph R. and Barbara Battaglia, John M. and Mary M. Battaglia, and Mazen M. and H. Mardini, respectively; Government Code §54956.8 (PW)

b) Actual litigation: Government Code §54956.9(a); one case; Sanchez v. City of Lodi et al., San Joaquin County Superior Court, Case No. CV 022301 (HR)

C-3 ADJOURN TO CLOSED SESSION

At 6:07 p.m., Mayor Hansen continued the Closed Session meeting to discuss the above matters.

The Closed Session adjourned at 6:17 p.m.

C-4 RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

At 7:00 p.m., Mayor Hansen reconvened the City Council meeting, and City Attorney Hays disclosed the following actions.

In regard to Items B-1 and B-2, on a vote of 4-1 (Council Member Hitchcock dissenting), staff received direction from Council with regard to settlement negotiations with USF&G.

In regard to Item G2 (a), Council gave direction to staff with regard to how to proceed with the proposed acquisition.

In regard to Item C-2 (b), with a 3-1 vote (Council Member Hitchcock dissenting), Council authorized staff to retain outside counsel to handle the case. Mayor Hansen reported that he had abstained from discussion and voting on this matter, as he had a potential conflict of interest.

A. CALL TO ORDER / ROLL CALL

The Regular City Council meeting of December 17, 2003, was called to order by Mayor Hansen at 7:00 p.m.

Present: Council Members – Beckman, Hitchcock, Howard, Land, and Mayor Hansen

Absent: Council Members – None

Also Present: City Manager Flynn, City Attorney Hays, and City Clerk Blackston

B. INVOCATION

The invocation was given by Father Rick Matters, St. John the Baptist Episcopal Church.

C. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Hansen.

D. AWARDS / PROCLAMATIONS / PRESENTATIONS

D-1 Awards – None

D-2 Proclamations – None

D-3 (a) Ricky Gill and Karlyn Nieland, members of the Greater Lodi Area Youth Commission, recognized the Teen of the Month, Sherri Tejamu from Jim Elliot Christian High School, and provided Council with an update on the Commission's accomplishments.

D-3 (b) Following introduction by Rob Lechner, Manager of Customer Service and Programs, Mayor Hansen presented a Certificate of Recognition to Rob Lechner as the coordinator of the Lodi Youth Helping Hands Project, who accepted the Certificate on behalf of the 47 volunteers who participated in the project.

D-3 (c) Tony Galvin, representing the Lodi Area All Veterans Plaza Foundation, presented a check in the amount of \$10,000 to Mayor Hansen, accepting on behalf of the City, for the quarterly payment on loan from the City of Lodi.

D-3 (d) Tiffani Fink, Transportation Manager, and Sergeant Tod Patterson with the Lodi Police Department gave a presentation regarding the kick off of the City of Lodi's Bicycle and Pedestrian Office of Traffic Safety Grant Program KID PATROL.

E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Council Member Land, Beckman second, unanimously approved the following items hereinafter set forth **except those otherwise noted**:

E-1 Claims were approved in the amount of \$4,429,134.54.

E-2 The minutes of November 10, 2003 (Special Joint Meeting with the Parks and Recreation Commission) and December 3, 2003 (Regular Meeting) were approved as written.

E-3 Approved the donation of a retired scoreboard to Lodi Cycle Bowl.

E-4 Adopted Resolution No. 2003-233 approving the plans and specifications and authorizing advertisement for bids for Traffic Signal and Street Lighting Improvements at Lodi Avenue and Mills Avenue, and Signal Interconnect System on Lodi Avenue; and authorizing the City Manager to award the contract and appropriate funds in the amount of \$452,000.

- E-5 Adopted Resolution No. 2003-234 awarding bids for purchase of polemount and padmount transformers to the bidders whose proposal and equipment meet City of Lodi specifications, and whose transformers are expected to yield the lowest overall life-cycle costs:
- | | |
|--|-------------|
| Wesco Distribution, San Leandro (polemounts & 112.5kVA padmounts) | \$33,819.50 |
| Western States Electric, Portland, OR (50, 75, and 750kVA padmounts) | \$45,239.91 |
| Howard Industries, Laurel, MS (37.5kVA padmounts) | \$ 6,038.31 |
| Ermco, c/o Hees Enterprises, Astoria, OR (500kVA padmounts) | \$11,714.58 |
- E-6 Adopted Resolution No. 2003-235 awarding the purchase of 72,500 feet of ADSS fiber optic cable, pole line hardware, fiber optic test and splicing equipment, and GE OC-3 JungleMUX Multiplexer equipment to the low bidders in each category and appropriated funds in the amount of \$305,952.42.
- E-7 “Adopt resolution authorizing the City Manager to approve the purchase of White Slough Water Pollution Control Facility filter, aeration, and UV disinfection equipment; appropriate wastewater funds; and adopt reimbursement resolution (up to \$6.6 million)” was **removed from the Consent Calendar and discussed and acted upon following approval of the Consent Calendar.**
- E-8 Adopted Resolution No. 2003-236 to rescind the award to Graybar Electric, of Roseville, for Category 2 (Overhead Hardware) of the Electric Utility Overhead and Underground Distribution Hardware Supply Contract for 2003-05 for failure to sign the agreement, and to award Category 2 to the second-low bidder, Southwest Power, of Benicia, for an estimated total amount of \$38,750.36.
- E-9 Adopted Resolution No. 2003-237 awarding the contract for DeBenedetti Park/G Basin Rough Grading to A.M. Stephens Construction Company, of Lodi, in the amount of \$266,680; and appropriated \$320,000 for the project in accordance with staff recommendation.
- E-10 Adopted Resolution No. 2003-238 awarding the contract for Rental and Cleaning of Uniforms and Other Reusable Products to Prudential Overall Supply, of West Sacramento, in the amount of \$15,000± per year.
- E-11 Adopted Resolution No. 2003-239 accepting the improvements in Tienda Place, Unit No. 1, Tract No. 3141.
- E-12 Adopted Resolution No. 2003-240 accepting the improvements in Tienda Place, Unit No. 2, Tract No. 3198.
- E-13 Adopted Resolution No. 2003-241 approving the addendum to the improvement agreement for the public improvements of Century Meadows One, Unit 2, Tract No. 2786, and directed the City Manager and City Clerk to execute the addendum to the improvement agreement on behalf of the City.
- E-14 Adopted Resolution No. 2003-242 authorizing the City Manager to execute a contract with Camp Dresser & McKee, Inc., for value engineering services for the White Slough Water Pollution Control Facility project and appropriated up to \$120,000 from the Wastewater Fund.
- E-15 Adopted Resolution No. 2003-243 amending Traffic Resolution 97-148 approving converting the traffic control at the intersection of Tokay Street and Washington Street from a two-way stop to a multi-way stop and approving the installation of stop signs on Live Oak Way at Sweetwood Drive.
- E-16 “Adopt resolution amending the policy and fee for fence and landscape maintenance in new developments to require the formation of a lighting and landscape district” was **removed from the Consent Calendar and discussed and acted upon under the Regular Calendar.**

- E-17 Adopted Resolution No. 2003-244 establishing and updating Public Works engineering fees for preparation of agreements and processing of improvement projects.
- E-18 "Adopt resolution authorizing the City Manager to allocate a Public Benefits Program grant in the amount of \$25,000 for energy efficiency improvements for the LOEL Center's senior housing project" was **removed from the Consent Calendar and discussed and acted upon following approval of the Consent Calendar.**
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ACTION ON ITEMS REMOVED FROM THE CONSENT CALENDAR

- E-18 "Adopt resolution authorizing the City Manager to allocate a Public Benefits Program grant in the amount of \$25,000 for energy efficiency improvements for the LOEL Center's senior housing project"

NOTE: Due to a potential conflict of interest related to his employment with F&M Bank, Council Member Land abstained from discussion and voting on this matter.

MOTION / VOTE:

The City Council, on motion of Council Member Hitchcock, Beckman second, adopted Resolution No. 2003-245 authorizing the City Manager to allocate a Public Benefits Program grant in the amount of \$25,000 for energy efficiency improvements for the LOEL Center's senior housing project. The motion carried by the following vote:

Ayes: Council Members – Beckman, Hitchcock, Howard, and Mayor Hansen
Noes: Council Members – None
Absent: Council Members – None
Abstain: Council Members – Land

- E-7 "Adopt resolution authorizing the City Manager to approve the purchase of White Slough Water Pollution Control Facility filter, aeration, and UV disinfection equipment; appropriate wastewater funds; and adopt reimbursement resolution (up to \$6.6 million)"

Public Works Director Prima explained that phase two of the White Slough Water Pollution Control Facility project consists of installation of tertiary filters, UV disinfection equipment, additional aeration improvements and related work. He referenced the "blue sheet" (filed) submitted to Council and reported that the UV filters are being bid competitively, while the aeration panels and tertiary filters are sole source.

In answer to Council Member Howard, Mr. Prima confirmed that staff will be following through with the cloth-media filtration equipment.

MOTION / VOTE:

The City Council, on motion of Mayor Hansen, Beckman second, unanimously adopted Resolution No. 2003-246 authorizing the City Manager to approve the sole-source purchase of White Slough Water Pollution Control Facility filter, aeration, and UV disinfection equipment; appropriated wastewater funds; and adopted Resolution No. 2003-247 declaring intent to reimburse certain expenditures from proceeds of indebtedness (up to \$6.6 million).

F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

- Ken Owen, Director of Christian Community Concerns, submitted a written statement (filed) to Council and expressed concern regarding confusion about what is, and is not, acceptable seasonal religious expression in the community. He cited the following case law and stated that the following forms of religious expression are legal under the constitution:

1. Students are free to express their religious beliefs in school (*Lovell v. City of Griffin*, 303 U.S. 444 1938; *Westfield High School L.I.F.E. Club v. City of Westfield*, 249 F. Supp. 2D 98 D. Mass. 2003);
2. At school students can sing Christmas carols at concerts, teach the biblical origins of Christmas, and perform the Christmas story of Mary, Joseph, Jesus, and the shepherds (*Florey v. Sioux Falls School District*, 619 F. 2D 1311 6th Cir. 1980; *Stone v. Graham*, 449 U.S. 39 1980); and
3. Nativity displays can be placed in schools, parks, and government buildings (*Americans United for Separation of Church and State v. City of Grand Rapids*, 980 F. 2D 1538 6th Cir. 1992; *West Virginia v. Barnette*, 319 U.S. 624, 642 1943; *Lynch v. Donnelly*, 465 U.S. 668, 671 1984).

In conclusion Mr. Owen stated that the U.S. Constitution, laws, and court decisions are all construed to protect and permit religious expression in both public schools and government buildings.

- Donna Phillips, representing Friends of Lodi Lake, expressed opposition to the Extreme Sports proposal by the Parks and Recreation Department to be brought before Council in January. She stated that it would bring noise and a carnival atmosphere to a residential area. Friends of Lodi Lake would like to keep the park serene and peaceful. She urged Council to reject the proposal.
- Ron Bernasconi recalled that a time limit was placed on speakers at Council's special joint meeting with the Recreation Commission on November 10. He noted that the following day, City Clerk Blackston provided Council with a memorandum, which indicated that the five-minute limit applied to non-agenda items. Mr. Bernasconi stated that he had a presentation prepared for the November 10 meeting, which spanned a decade of facts and circumstances; however, he was not given adequate time to make the presentation. He reported that since 1993 the City's relationship with the Boosters of Boys and Girls Sports (BOBS) has created joint duties imposed by state law to screen out violent sexual criminals who have volunteered to have authority over youth on public schools, parks, and recreational facilities. Mr. Bernasconi stated that he had documents, which established these facts; however, they were not included in the 97-page meeting packet that Council received on November 10, though they had been in the custody of the City Attorney. He reminded Council Members that staff was supposed to fully apprise them of the legal and operational relationship between the City and BOBS. The documents provided evidence that various public officials engaged in willful or negligent misconduct related to the refusal to implement and/or obey state law to protect youth from violent or sexual criminals. He believed they were serious matters that deserved public disclosure. Mr. Bernasconi referenced documents he submitted to Council (filed) and reported that in 1995 Deputy City Attorney John Luebberke advised the Recreation Commission that the 1993 Public Resources Code sees these codes as all inclusive and that City employees and volunteers having disciplinary authority over minors must be screened. He stated that Mr. Luebberke also acknowledged a relationship between the City and the BOBS and recommended that all volunteer positions be screened. Mr. Bernasconi asked Council to grant him an opportunity to fully address these issues.

City Attorney Hays recalled that the City Clerk's memorandum also indicated that Council's procedures provide for a motion to limit debate, which was what occurred on November 10. He stated that the program referred to by Mr. Bernasconi had been implemented by the City and has been in place for several years. He acknowledged that Council discussed the matter in 1995; however, the topic was tabled and not brought back. Staff implemented the procedure subsequent to that time.

Mr. Bernasconi noted that the minutes of November 10 reflect that two Recreation Commissioners supported the position that BOBS board members have supervisory and disciplinary authority over minors on public schools, parks, and playgrounds. He pointed out that the City did not implement the law until August 2001, only after the Department of Justice had required them to do so.

Council Member Hitchcock recalled that Mr. Beckman had asked on November 10 whether limiting public comments to five minutes was a standard procedure, to which Mr. Hays had replied that it was. She felt that Council had been misinformed.

Council Member Beckman agreed with Ms. Hitchcock; however, given Council's authority to limit debate, he felt that the end result at that particular meeting would not have changed.

Addressing Mr. Bernasconi, Mayor Hansen stated that an ad hoc committee was created to review the BOBS matter and return to Council with recommendations. He recalled that Mr. Bernasconi has had many opportunities to express his concerns to Council, and noted that if he would like to pursue the matter in court it would be his choice.

Council Member Hitchcock did not believe there was due process given on November 10 and stated that when the committee makes its recommendations to Council the public will have an opportunity to respond.

G. PUBLIC HEARINGS

- G-1 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hansen called for the public hearing to consider unmet transit needs in Lodi for fiscal year 2003-04.

Tiffany Fink, Transportation Manager, reported that the Transportation Development Act requires that annual hearings be held for unmet transit needs. The hearings are held in every jurisdiction throughout the county at a variety of venues. The goal is to determine where there is a deficiency in transit service that could be met. Feedback from the meetings is taken to the social services technical advisory committee to review and determine if they are reasonable. A draft document will be prepared and available to the public for review later this year.

Hearing Opened to the Public

None.

Public Portion of Hearing Closed

Council Member Hitchcock asked what comments Ms. Fink had received and she replied that she had received one comment thus far; however, it did not relate to Lodi's service. Ms. Hitchcock recalled that concerns have been expressed for years regarding the length of time it takes for Dial-A-Ride service. She believed that there were more complaints last year than previously. It had been pointed out to her that the cause for delay was in part due to students using Dial-A-Ride rather than accessing the Grapeline.

Ms. Fink reported that, overall, rider ship is up and reservations have increased each year. Lodi has a general public service program, so preference is not given to seniors or the disabled.

Council Member Hitchcock preferred that senior citizens be given preference for Dial-A-Ride service over able-bodied users.

Council Member Howard stated that she would like a Shirtsleeve Session held to review how the transition to MV Transportation has gone, whether it has implemented the customer service programs it spoke of when it was awarded the contract, and what the feedback has been.

Mayor Hansen recommended that Ms. Fink provide Council with a presentation in the future regarding the feasibility of setting up a priority system to better serve the disabled and senior citizens of the community.

MOTION / VOTE:

There was no Council action necessary on this item.

H. COMMUNICATIONS

H-1 Claims filed against the City of Lodi – None

H-2 Reports: Boards/Commissions/Task Forces/Committees – None

H-3 Appointments – None

H-4 Miscellaneous

- a) City Clerk Blackston presented the cumulative Monthly Protocol Account Report through November 30, 2003.

I. REGULAR CALENDAR

- I-1 “Presentation of proposal by Bill Mathis of Mathis and Associates and selection of facilitator for team-building sessions with Council Members”

Deputy City Manager Keeter noted that on November 16 Pastor Dale Edwards gave a presentation on this topic. Following the presentation this evening by Bill Mathis, Council is asked to discuss and make a facilitator selection for its team-building sessions.

Mr. Mathis reported that he has worked in both the public and private sector for the past 30 years and that 80% of his work is with public officials. He commented that he has worked with 157 city managers and 45 city attorneys who have been fired. He noted that one of the areas councils have difficulty with is in evaluating their city managers and attorneys. He stated that a council that does not have agreed-upon guidelines and rules is almost always going to have conflicts within itself. He proposed interviewing council members initially and then conducting an evening orientation session, with a team-building session held the following day for five to six hours.

In reply to Council Member Land, Mr. Mathis stated that he has assisted 50 cities in developing a code of ethics.

Council Member Hitchcock felt that all three council appointees (i.e. City Manager, City Attorney, and City Clerk) should participate in the team-building session.

Mr. Mathis agreed and commented that, though city clerks are neutral and apolitical, they have ideas to contribute, which can be more easily expressed when they are not going to get exposed for their viewpoint.

Mayor Hansen noted that Mr. Mathis charges \$5,000 to \$6,000 for his services; whereas, Pastor Edwards has agreed to facilitate Council team-building sessions at no cost.

In answer to Council Member Hitchcock, Mr. Mathis stated that his fee includes interviews and Friday and Saturday sessions; it does not include additional follow up.

Council Members Howard and Land suggested that Pastor Edwards be selected as the facilitator for initial team-building sessions.

Council Member Hitchcock recommended that Mr. Mathis' fee be paid for from each Council Member's travel budget, as she felt that the expertise and experience Mr. Mathis would bring to the process would be worth the expenditure and result in greater effectiveness.

MOTION/ VOTE:

The City Council, on motion of Mayor Pro Tempore Beckman, Land second, unanimously selected Pastor Dale Edwards with Century Assembly Church to facilitate the team-building sessions with the Lodi City Council.

RECESS

At 8:34 p.m., Mayor Hansen called for a recess, and the City Council meeting reconvened at 8:43 p.m.

I. REGULAR CALENDAR (Continued)

- I-2 "Discussion and appropriate action regarding budget deficit and Vehicle License Fee backfill impacts to the City of Lodi"

City Manager Flynn recalled that in late November staff announced the action by the Governor to repeal the Vehicle License Fee (VLF) increase and to bring it back to the old level without any recommendations regarding backfill, which brought the City to an immediate crisis. Mr. Flynn commented that he was supportive of the Governor's action, because he believed it was the right thing to do for the citizens of California. He noted, however, that he felt the State should meet its obligation to backfill the VLF. The portion of the VLF that goes to public safety in Lodi is 46%.

Reviewing a "blue sheet" report on this item (filed and marked as Exhibit A), Mr. Flynn recommended that the \$95,000 subsidy to Spohn Ranch for operation of the skate park be eliminated and that the park remain open, but unsupervised. He noted that when considering layoffs, for budget purposes, an average of \$65,000 a year is attributed to each employee. He recalled that initial budget projections showed that an additional \$51,900 was needed this year and \$189,000 next year, to fully fund the Public Employees Retirement System (PERS). In reference to medical insurance rate increases, the City over budgeted \$59,378 this year and \$352,700 next year. He recommended that General Liability be increased an additional \$100,000. Variable time off was budgeted at \$50,000; however, the City attained \$165,000. The "golden handshake" retirement program was budgeted to save \$600,000; however, it was decided not to implement the program, so the money must be added back in.

Mr. Flynn stated that if the City does not get the VLF, there is \$2,232,000 in the general fund capital accounts that could be put back into the general fund operating account to address the shortfall. He reported that reserves in the general fund were drawn down by \$1.5 million and as of June 30 it totaled a decrease in reserves of 5%. He recommended that an additional \$774,000 be placed in the reserve account in 2004-05. He reported that if the City does not get the VLF, it will lose \$2,680,000 this year and \$2,680,000 next year. By combining the VLF loss and other adjustments, it results in a net shortfall of \$4,435,416.

Debbie Olson, League of California Cities Regional Representative, reported that there will be an announcement tomorrow from the Governor's Office, which she believed would provide funding for the VLF beginning December 26 through March when the bond measure will be considered.

Council Member Howard recommended that Council Members reduce their travel accounts from \$5,000 to \$3,000 and decrease the Protocol Account from \$18,000 to \$15,000.

In answer to Mayor Hansen, Mr. Flynn explained that the total VLF is \$3.2 million. He stated that the difference between \$3.2 million and \$2.6 million is 35%, i.e. the City's guarantee. The backfill amount is \$2.6 million.

Finance Director McAthie reported that the State notified her office that the money sent in October and November was an error and that it would rectify it by not sending any money in January or February.

Ms. Olson confirmed that the Department of Motor Vehicles has said that there will be no VLF in January or February, and potentially in March.

Council Member Hitchcock requested a report that shows the entire budget picture, i.e. all revenues, expenditures, and budgeted priorities.

Mr. Flynn reported that salaries are less than what was budgeted. The City's budget deficit, in terms of employees, would equal 68 people at an average of \$65,000 each, which includes salary and benefits. He pointed out that it should not be considered as a particular job, but rather, a position and the service it provides. The Council will look at the budget side and make decisions as to what services the City will provide. He stated that ideas such as a mandatory furlough have been considered. One day each pay period would constitute a 10% cut in salary. Another idea was to cut out all services that were not considered "core services" of the City; however, making that determination is problematic.

Referencing an addendum to the staff report (filed and marked as Exhibit B), Mr. Flynn stated that he would like to institute a "City Manager's Budget Review Committee." In addition, he suggested that a public survey be done to assist the committee in making its recommendations and to help the community define what core City services are. He distributed the city of Roseville's survey (filed and marked as Exhibit Q), which ranked general fund services.

Mr. Flynn reviewed phase one suggestions (filed and marked as Exhibit D). He reported that the total sum of these actions as they applied to this year and next year would amount to a savings of \$208,350. If the VLF backfill is not received, the City will be faced with a deficit of \$4,100,000. He reported that the City has 489 authorized positions; of these positions 52 are employed in Electric Utility, one is paid from transportation funds, and 40 are employed in the Water and Wastewater Divisions of Public Works. Currently there are 25 general fund position vacancies. There are 165 public safety officers and dispatchers. One code enforcement position is fully funded by block grant money. After subtracting these positions from the original number, there would be 205 positions remaining to consider for a reduction in force. If 68 positions were removed it would result in a reduction in services by one third in all other functions.

Council Member Hitchcock recommended that the public survey be done in-house, rather than spending \$30,000 for a consultant. She asked Mr. Flynn if the projected \$750,000 savings as a result of 25 vacancies is on target, to which he replied in the affirmative.

Council Member Land voiced support for the concept of getting community input on the budget situation. He suggested the name of "Voice Your Choice" for the public survey. He recommended that the survey also solicit revenue-generating ideas from the community. Addressing the City Manager and Deputy City Manager, he recommended that formal presentations be made to service clubs, church groups, etc. In reference to potential budget cuts, he expressed his opinion that every department should participate including those funded by enterprise funds. He agreed with the phase one recommendations, as well as Ms. Howard's suggestion to decrease Council Members' Travel Accounts and the Protocol Account. In addition he suggested that City Council's salary be decreased by 20% and the traditional payment for attendees at the annual Delta College Business Leadership Summit be eliminated. He asked Mr. Flynn to reconsider the fleet management policy as part of subsequent phases.

Mayor Pro Tempore Beckman believed that Council's interaction with the community serves, essentially, as a survey. For this reason he was not in favor of Mr. Flynn's recommendation to expend funds on a formal survey. He pointed out that Lodi has a 2% growth cap and many citizens have voiced opposition to the proliferation of large retail stores in the community. These actions are, in part, the reason Lodi is facing budget difficulties.

MOTION #1 / VOTE:

The City Council, on motion of Mayor Pro Tempore Beckman, Hitchcock second, unanimously adopted Phase I as follows to be implemented immediately:

Phase I	2003-2004	2004-2005	Total 18 mos.
ICMA survey fee	(6,000)	(6,000)	(12,000)
Leadership Lodi & UOP	(2,300)	(5,400)	(7,700)
Skate park	(30,000)	(65,000)	(95,000)
City Manager reduction in travel expense	(8,000)		(8,000)
City Manager reduction in benefits	(10,000)		(10,000)
ISD training budget reduction	(40,000)		(40,000)
Finance - change final notification process	(8,000)		(8,000)
Eliminate unencumbered GASB 34 funds	(10,000)		(10,000)
HR freeze job reclassification studies	(3,450)		(3,450)
Library reduce maintenance & repair duplication	(8,000)		(8,000)
Library reduce summer reading club supplies	(1,200)		(1,200)
Defer purchase of sod cutter for year	<u>(5,000)</u>		<u>(5,000)</u>
	131,950	76,400	208,350

In response to Council Member Land's suggestion of decreasing Council Member salary, Mayor Hansen noted that it would only be a symbolic gesture and, in his case, a 20% cut would nearly result in him owing the City each month. He reported that, after taxes, he nets \$125 every other week. In addition, he often times does not seek reimbursement for business travel costs such as mileage or parking fees and rarely, if ever, charges for meals while on business.

In answer to Council Member Land, City Attorney Hays stated that a section of the Government Code addresses council salary and he believed it only allowed for changes at the time of an election. He noted that Mr. Land could take his check and then donate back a portion of it if he chose to.

MOTION #2 / VOTE:

The City Council, on motion of Council Member Howard, Land second, unanimously reduced Council Members' Travel Expense Accounts from \$5,000 to \$3,000 each and reduced the Protocol Account from \$18,000 to \$15,000.

MOTION #3 / VOTE:

The City Council, on motion of Mayor Hansen, Hitchcock second, unanimously directed the City Manager to explore options for a survey and return to Council on January 7, 2004, with a recommendation.

- I-3 "Adopt resolution supporting the *Local Taxpayers and Public Safety Protection Act*, the November 2004 ballot initiative cosponsored by the League of California Cities, designed to increase local control over local tax dollars"

Debbie Olson, League of California Cities Regional Representative, reported that, for over a decade, the state has been balancing its budgets on the backs of local government. During the late 1990s when the state budget had billion dollar surpluses, it continued to take \$800 million a year from local governments. The Local Taxpayers and Public Safety Protection Act is a constitutional amendment to protect local government revenues. The Act's name was chosen because in the majority of cities over 60% of their general fund money goes toward public safety. The measure requires voter approval before the state government can take local government revenues. Additionally, it makes it clear that legislature cannot require local governments to provide services without also providing payment for those services. It does not raise taxes, does not take money from any other service, nor does it provide for a larger piece of the budget to go to local government. Mayor Pro Tempore Beckman voiced support for the resolution.

Council Member Howard noted that the title for the initiative was originally "A Ballot Initiative to Protect Local Government Revenues." She preferred the original title because it best clarified that the money that would be protected goes to a general fund. Every city's percentage of general fund that is distributed toward public safety is different. She believed that the title was changed to gain voter compassion.

In response to Council Member Howard, Ms. Olson explained that the retroactive section of the initiative was designed to prevent the legislature from cutting all local government funding from this budget year, or between the time it is filed and the date of the election, without having an alternative source of funding for those local government funds; otherwise, they would have to go to the voters right away. The three main areas that the initiative addresses are VLF and property and sales tax. It also has a provision in it for cities that have redevelopment funding.

MOTION:

Council Member Land made a motion, Hansen second, to adopt Resolution No. 2003-248 supporting the *Local Taxpayers and Public Safety Protection Act*, the November 2004 ballot initiative cosponsored by the League of California Cities, designed to increase local control over local tax dollars.

DISCUSSION:

Council Member Hitchcock reported that Assembly Member Alan Nakanishi sent a letter informing the City that he spoke personally with the Governor regarding the critical importance of providing VLF backfill funding to local governments. The Governor gave his assurance that he was committed to seeing that cities receive the VLF backfill that they depend on.

Mayor Hansen stated that he would be participating in gathering signatures for the initiative and encouraged others to do the same.

VOTE:

The above motion carried by a unanimous vote.

- I-4 "Update regarding audit (agreed-upon procedures) of Envision Law Group's billings"

Mayor Hansen reported that he has received communications from Envision Law Group and Barger & Wolen and has also obtained copies of decisions from the Lincoln court case. Some billings in the Lincoln case were found to be unreasonable and unnecessary, which was evident in one ruling in which the judge cut in half invoices that totaled more than \$600,000 and in a separate ruling \$128,000 in invoices was cut. In the Lincoln case,

funding that had been designated for cleanup was being spent at such a high rate that they were running out of money for the abatement. In reference to the potential conflict of interest issue, both Barger & Wolen and Envision Law Group created hypothetical questions to present to the State Bar. The City Attorney and attorneys from Barger & Wolen reviewed both the questions and determined that they were essentially the same. Robert Levy of Barger & Wolen presented his question to the State Bar and was informed that it was a waivable conflict and they could proceed with the audit.

Council Member Howard pointed out that Envision Law Group still represents the City and she asked that negative comments about the firm be held until results of the audit are known.

Council Member Hitchcock asked Mr. Hansen what the total cost of the Lincoln case was, to which he replied that it was more than what Lodi has spent so far. Ms. Hitchcock stated that she had been very disturbed to read in the newspaper that the judge has basically informed the City that it does not have a case. She felt that it was unconscionable and negligent representation that led the City to this point. She believed that Envision Law Group came to Lodi and implemented the same practices it used in the Lincoln case.

Council Member Beckman offered to call the State Bar and obtain an answer on the conflict of interest issue.

John Meyer of Envision Law Group pointed out that Barger & Wolen was opposing counsel on the Lincoln case and he believed that they had taken tremendous liberties with the facts. He urged Council to speak with representatives of Lincoln Properties to ascertain its level of satisfaction before Council reaches final assessment of the historical facts relating to Envision's representation of that client.

Mayor Hansen explained that his comments were not based solely upon information from Barger & Wolen; his opinion was also formed after reviewing the judge's decisions and transcripts from the hearings.

MOTION / VOTE:

There was no Council action necessary on this item.

- I-5 "Housing Element update: announcing the commencement of the public review of the proposed Housing Element and draft Environmental Impact Report"

Jeff Goldman of Cotton Bridges Associates reviewed the draft 2003-09 City of Lodi Housing Element (filed). He reported that the introduction provides an overview for the entire element, e.g. its purpose and contents, the community context, state law requirements, data that was used and the sources of that information, summary of goals and policies, public participation, and how the document is consistent with the rest of the general plan. The community profile is the background chapter of the element, which speaks to population, household characteristics and projections, housing stock characteristics, employment trends, needs of special population groups, status of assisted rental housing, government subsidized rental housing that may be at risk of converting to market rate housing, opportunities for energy conservation, and the City's future housing construction needs. Chapter three focuses on resources available to the City including land resources to meet future housing needs and constraints that may impede the ability to meet those needs. The most important part of the document is the housing strategy, which includes goals, policies, programs, and quantified objectives. One of the aspects of identifying what the City's needs are, and how they will be met, is Lodi's share of San Joaquin County's regional housing construction needs between 2001-09. Under the San Joaquin Council of Governments' regional housing allocation plan, the City needs to show how it can accommodate 4,014 housing units during this period. A number of these units have been built, are under construction, or approved; however, there is still a significant number that needs to be shown can be accommodated in Lodi. The draft housing element will become

available for public review beginning next week. The draft will also be submitted to the State of California to begin the 60-day mandated state review by the Department of Housing and Community Development (HCD). This process will conclude in February 2004 with written comments as to whether, in HCD's opinion, the element is, or is not, in substantial compliance with state law. Staff will address the State's written comments during February and March and will return to Council for adoption of the housing element in April. Subsequent to that, the State will review the document again for a period of up to 90 days.

Community Development Director Bartlam noted that public review of the draft Environmental Impact Report will be concurrent with the review period of the draft housing element. During the next 60 days there will be a Planning Commission hearing held specifically to receive comment. In addition, staff will be making presentations to specific interest groups that have requested additional information.

In reply to Council Member Hitchcock, Mr. Bartlam indicated that a Shirtsleeve Session would be held toward the end of February to review the status of the document following the bulk of the public comment period and after written comments from the State have been received.

MOTION / VOTE:

There was no Council action necessary on this item.

VOTE TO CONTINUE WITH THE REMAINDER OF THE MEETING

The City Council, on motion of Council Member Howard, Hitchcock second, unanimously voted to continue with the remainder of the meeting following the 11:00 p.m. hour.

I. REGULAR CALENDAR (Continued)

- I-6 "Adopt resolution establishing hiring guidelines regarding employees or volunteers who perform services at a park, playground, school facility, recreational center, or beach in a position having supervisory or disciplinary authority over any minor"

City Attorney Hays reported that his office discovered that the underlying legal authority for the screening program, which the City was using to do background checks dealing with recreational activities, had been repealed. References to sections dealing with what crimes were to be disqualifying had been eliminated from the state law. Under the City's police power, a policy can be adopted that would reinstitute the program in terms of the specific disqualification actions on the part of a person. The resolution before Council puts into place a policy of the City with regard to disqualification that is a mirror image of the provisions of the state law that were excised out.

MOTION / VOTE:

The City Council, on motion of Mayor Pro Tempore Beckman, Howard second, unanimously adopted Resolution No. 2003-249 establishing hiring guidelines regarding employees or volunteers who perform services at a park, playground, school facility, recreational center, or beach in a position having supervisory or disciplinary authority over any minor.

- I-7 "Introduce ordinance amending Title 8, Health and Safety, Chapter 8.24, Comprehensive Municipal Environmental Response and Liability, by repealing and reenacting Section 8.24.010, 'Definitions,' Subsection 2, and Section 8.24.040, 'Liability,' Subsection F, to the Lodi Municipal Code relating to abatement action costs and recovery issues"

City Attorney Hays explained that agenda items I-7 and I-8 are companion items. One of the principle documents provided to Council was the Fireman's Fund Insurance Company versus the City of Lodi case. In that case the vast majority of the Municipal Environmental

Response and Liability ordinance (MERLO) was found to be valid by the Ninth Circuit Court; however, it found a few questionable circumstances. He read the following statement from the staff report, *"As the Court ruled that the MERLO should be preempted by federal law to the extent that MERLO defined 'abatement action costs' in a manner permitting the City to recover attorneys fees and interest in an abatement action concerning a site (or portion of a site) where the City would be deemed a potentially responsible party under federal CERCLA, an amendment to the MERLO is appropriate to: (1) limit the definition of 'abatement action costs' as including litigation costs or attorneys fees imposed by the MERLO to those instances where the City is not liable under 42 U.S.C. section 607; and (2) expressly authorize the recovery of attorneys fees by a prevailing party pursuant to California Government Code Section 38773.5 in specific actions."* Mr. Hays explained that the amended ordinance is designed to address that query of the Ninth Circuit Court.

Council Member Hitchcock asked what the issues were and why there was a need to make the changes.

Mr. Hays stated that the City has responded to the Ninth Circuit by defining abatement action costs and pointed out that if the City is not a potentially responsible party (PRP) "certain things happen" and if it is a PRP "other things happen." He noted that some of the amendments to the MERLO were simply clarification items. He explained that the court stated that if the City is liable, and to the extent that it is, its abilities to recover abatement action costs are limited. It has been made clear in the ordinance that the issue that the court addressed is now recognized.

Discussion ensued between Council Member Hitchcock and Mr. Hays who attempted to clarify the changes contained in the MERLO.

Council Member Hitchcock stated that she was suspect about making any amendments and expressed concern that it would create another negative situation for the litigation.

MOTION / VOTE:

The City Council, on motion of Mayor Pro Tempore Beckman, Land second, introduced Ordinance No. 1738 amending Title 8, Health and Safety, Chapter 8.24, Comprehensive Municipal Environmental Response and Liability, by repealing and reenacting Section 8.24.010, "Definitions," Subsection 2, and Section 8.24.040, "Liability," Subsection F, to the Lodi Municipal Code relating to abatement action costs and recovery issues. The motion carried by the following vote:

Ayes: Council Members – Beckman, Howard, Land, and Mayor Hansen

Noes: Council Members – Hitchcock

Absent: Council Members – None

- I-8 "Introduce ordinance amending Title 8, Health and Safety, Chapter 8.24, Comprehensive Municipal Environmental Response and Liability, by repealing and reenacting Section 8.24.090, 'Miscellaneous Provisions,' Subsections D and E, and adding Subsection F to the Lodi Municipal Code relating to the availability of contribution"

City Attorney Hays explained that this amendment to the Municipal Environmental Response and Liability ordinance (MERLO) addresses the second issue in the Ninth Circuit Court opinion. The Ninth Circuit ruled that the MERLO is preempted by federal law to the extent that it prohibited contribution against the City even if the City was a potentially responsible party. Mr. Hays stated that the MERLO never intended to not allow contribution. He stated that the court was not sure that the general contribution law in the state environmental statutes applied, so it said to the extent that they do not apply, the MERLO would be preempted. The amendment now clearly states in the MERLO that they do apply, but if the court chooses to find that is not the case, the MERLO includes a contribution scheme.

MOTION:

Mayor Pro Tempore Beckman made a motion, Land second, to introduce Ordinance No. 1739 amending Title 8, Health and Safety, Chapter 8.24, Comprehensive Municipal Environmental Response and Liability, by repealing and reenacting Section 8.24.090, "Miscellaneous Provisions," Subsections D and E, and adding Subsection F to the Lodi Municipal Code relating to the availability of contribution.

DISCUSSION:

Council Member Hitchcock recalled that in a conversation with representatives from Barger & Wolen they spoke critically of the MERLO and stated that it was asking for things that even the state could not do. She expressed concern about the MERLO amendments and stated that she would be voting no on the motion.

VOTE:

The above motion carried by the following vote:

Ayes: Council Members – Beckman, Howard, and Land

Noes: Council Members – Hitchcock and Mayor Hansen

Absent: Council Members – None

- I-9 "Introduce ordinance amending Lodi Municipal Code Title 13 – Public Services by adding Chapter 13.14 'Stormwater Management and Discharge Control' relating to Stormwater"

Public Works Director Prima explained that the ordinance was modeled after the city of Sacramento's stormwater ordinance. He stated that, essentially, it takes a lot of what was in the wastewater ordinance and separates it into an ordinance regarding stormwater. The ordinance is in response to state and federal mandates regarding stormwater programs, discharge, and the City's stormwater permit.

In reply to Council Member Hitchcock, Mr. Prima reported that the section on service charges and fees is unique to Lodi. Article five was moved from the sewer ordinance to this ordinance. There is no change to existing practices. The ability to issue a notice for a stormwater discharge violation is made clear. The reference to a basin plan is new.

MOTION / VOTE:

The City Council, on motion of Council Member Land, Beckman second, unanimously introduced Ordinance No. 1740 amending Lodi Municipal Code Title 13 – Public Services by adding Chapter 13.14 "Stormwater Management and Discharge Control" relating to Stormwater.

- E-16 "Adopt resolution amending the policy and fee for fence and landscape maintenance in new developments to require the formation of a lighting and landscape district"

Council Member Hitchcock recalled that the last time staff brought this issue before Council they were opposed to it, and asked why they had changed their recommendation.

Public Works Director Prima explained that since the first presentation staff had an opportunity to go through the process and found it not to be as onerous as anticipated. In addition a scheme has been developed wherein new projects would be annexed to the existing district, which simplifies the process. He noted that impact fees cannot pay for maintenance, as they are one-time fees to cover capital facilities.

Council Member Hitchcock pointed out that it would likely be more cost effective for new homeowners' associations to have one landscaper maintain the area inside and outside reverse frontage walls. For this reason, she preferred that homeowners' associations remain in the policy as an option.

Council Member Land foresaw problems if homeowners' associations went bankrupt and were not able to maintain the public right of way area.

MOTION / VOTE:

The City Council, on motion of Council Member Hitchcock, Beckman second, adopted Resolution No. 2003-250 amending the policy and fee for fence and landscape maintenance in new developments to require formation of a lighting and landscape district or a homeowners' association. The motion carried by the following vote:

Ayes: Council Members – Beckman, Hitchcock, and Mayor Hansen

Noes: Council Members – Howard and Land

Absent: Council Members – None

J. ORDINANCES

None.

K. ADJOURNMENT TO AGENCY MEETINGS

K-1 "Meeting of the Lodi Public Improvement Corporation"

At 11:55 p.m., Mayor Hansen adjourned the City Council meeting to conduct the meeting of the Lodi Public Improvement Corporation. Following the call to order, Secretary Blackston recorded roll.

MOTION / VOTE:

The Corporation, on motion of Land, Beckman second, unanimously adopted Resolution No. LPIC2003-03 electing the new officers to the Lodi Public Improvement Corporation for the year 2004.

There being no further business, the meeting was adjourned at 11:56 p.m.

K-2 "Meeting of the Industrial Development Authority"

At 11:56 p.m., Chairperson Hansen called to order the meeting of the Industrial Development Authority, and Secretary Blackston recorded roll.

MOTION / VOTE:

The Authority, on motion of Authorizing Member Land, Beckman second, unanimously adopted Resolution No. IDA-24 electing the new officers to the Industrial Development Authority for the year 2004.

There being no further business, the meeting was adjourned at 11:57 p.m.

K-3 "Meeting of the Lodi Financing Corporation"

At 11:57 p.m., President Hansen called to order the meeting of the Lodi Financing Corporation, and Secretary Blackston recorded roll.

MOTION / VOTE:

The Corporation, on motion of Director Beckman, Land second, unanimously adopted Resolution No. LFC-10 electing the new officers to the Lodi Financing Corporation for the year 2004.

There being no further business, the meeting was adjourned at 11:58 p.m.

K-4 "Meeting of the City of Lodi Redevelopment Agency"

At 11:58 p.m., Chairperson Hansen called to order the meeting of the City of Lodi Redevelopment Agency, and Secretary Blackston recorded roll.

MOTION #1 / VOTE:

The Agency, on motion of Member Beckman, Land second, unanimously adopted Resolution No. RDA2003-02 electing the new officers to the City of Lodi Redevelopment Agency for the year 2004.

MOTION #2 / VOTE:

Further, the Agency, on motion of Member Land, Howard second, unanimously waived the \$50 compensation for its meeting of December 17, 2003.

There being no further business, the meeting was adjourned at 11:59 p.m.

Mayor Hansen reconvened the City Council meeting at 11:59 p.m.

L. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

- Council Member Howard recognized the Church of Jesus Christ of Latter-day Saints who had 200 nativity scenes on exhibit for the public last weekend.
- Council Member Hitchcock asked City Clerk Blackston to provide Council with an electronic copy of supplemental meeting documents.
- Council Member Land extended a Merry Christmas and Happy New Year greeting to the citizens of Lodi and reminded everyone about the Kids' Night Out on New Year's Eve.
- Mayor Hansen wished everyone a Merry Christmas and commended Century Assembly Church for its Singing Christmas Tree event.

M. COMMENTS BY THE CITY MANAGER ON NON-AGENDA ITEMS

- City Manager Flynn announced that Richard Prima's birthday was December 30.

N. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 12:10 a.m., Thursday, December 18, 2003, in memory of Elizabeth Rosenquist.

ATTEST:

Susan J. Blackston
City Clerk